

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL ACTION NO.
)	2:07cr260-MHT
WILLIAM TOBY KIMBROUGH)	(WO)

ORDER

This cause is before the court on defendant William Toby Kimbrough's motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for March 17, 2008, should be continued pursuant to 18 U.S.C. § 3161(h)(8).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making

public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(8)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(8)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Kimbrough in a speedy trial. Kimbrough represents that his expert witness, Jimmie Fisher, has made prior arrangements to be out of the country during the month of March. Therefore,

rescheduling is necessary to provide Kimbrough's counsel and expert with adequate time to prepare for trial. In addition, the government does not oppose a continuance.

Accordingly, it is ORDERED as follows:

(1) Defendant William Toby Kimbrough's motion for continuance (doc. no. 17) is granted.

(2) The jury selection and trial, now set for March 17, 2008, are reset for June 23, 2008, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 28th day of February, 2008.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE